



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	12 VAC 30
<b>VAC Chapter Number:</b>	VAC 90
<b>Regulation Title:</b>	Nursing Home Payment System
<b>Action Title:</b>	Resource Utilization Groups (RUGs)
<b>Date:</b>	12/14/2000 ASAP; NEEDS TO BE EFFECTIVE 1/1/2001

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Resource Utilization Groups (RUGs) for Nursing Facilities. This regulation will provide for Phase I of a new payment methodology for nursing facilities based on resident intensity of services. Without an emergency regulation, these regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 2001, effective date established by the General Assembly.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Chapter 1073 of the 2000 Acts of Assembly, Item 319 section MM provided that the Department adopt regulations providing for the implementation of a new reimbursement system based on a Resource Utilization Groups (RUGS) methodology to reflect resident intensity. The Department has been working with provider representatives to develop and plan the implementation of such a system. As a result of these efforts and at the request of the provider representatives, the Department is recommending that implementation of the new RUGS methodology be conducted in two phases.

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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Phase I, covered by these emergency regulations, will be conducted over the time period of January 1, 2001, through December 31, 2001. This phase will be used to provide information to providers regarding what payments would be under the RUGs methodology in comparison to the payments under the current payment methodologies. During Phase I, nursing facilities will continue to receive payment of direct operating rates based on the current PIRS methodology and

the Specialized Care methodology. Phase II, to be covered by the public notice and comment process contained in Article 2 of the APA, will be implemented on January 1, 2002. Phase II will include the implementation of actual payment rates for the direct operating component using the RUGs methodology.

The key provisions of this emergency regulation are related to information and reports that the Department must provide to nursing facilities during Phase I of the implementation of the RUGs system. The information will include the reporting of the Minimum Data Set assessment instrument data elements; the results of the use of the RUG-III 34-group, Version 5.12, Index Maximization patient classification system; and the results of the use of case-mix index scores based on RUGs to reflect resident intensity in the direct operating component of the payment rate. This emergency regulation will allow providers a time period of 12 months to analyze their case-mix data and the impact that these data will have on their direct operating payment rate. The Phase I time period will provide time for any corrections or adjustments that providers need to ensure that the implementation of Phase II, with actual payment based on the RUGs methodology, will be conducted with the least disruption possible and with the full knowledge of the providers.

Given the mandate of the General Assembly, the Department had two options for the implementation of a RUGs methodology: to implement payment under the new methodology on January 1, 2001, or to implement payment under the new methodology on a phase-in basis starting on January 1, 2001. The two options were discussed with provider representatives during meetings with the Department. The consensus opinion was that providers needed to have case-mix information, time to make adjustments, and knowledge of the payment they would receive compared to what they receive under the current methodology prior to actual payment based on the RUGs methodology. Therefore, the option of a phase-in implementation was selected and the option of implementing payment under the new methodology on January 1, 2001, was eliminated. The active participation and education of providers during the phase-in period is expected to avert any facility management or operational problems that could have resulted from limited knowledge.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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Alternative options were extensively discussed with the regulated industry and this package represents the decisions on the RUGs issue.

**Family Impact Statement**

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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This regulatory action will have no effect on consumers or recipients. Therefore, it will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.